

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: JUUL LABS, INC., MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY LITIGATION

MDL No. 2913

TRANSFER ORDER

Before the Panel: Plaintiff in the District of New Jersey (*Percella*) action listed on the attached Schedule A moves under Panel Rule 7.1 to vacate the Panel’s order conditionally transferring her action to MDL No. 2913. The Juul defendants¹ oppose the motion.

After considering the argument of counsel, we find that this action involves common questions of fact with the actions previously transferred to MDL No. 2913, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Thus, transfer is warranted for the reasons set out in our order directing centralization. The actions in the MDL share factual questions relating to “the development, manufacture, labeling, and marketing of JUUL products, and the alleged risks posed by the use of those products.” *See In re Juul Labs, Inc., Mktg., Sales Practices & Prods. Liab. Litig.*, 396 F. Supp. 3d 1366, 1367 (J.P.M.L. 2019). This action implicates the same questions.

Plaintiff argues that his case involves different questions of fact than the MDL litigation because he did not use JUUL products as a minor, does not allege that he suffers from nicotine addiction, and claims that his injuries resulted from various toxic ingredients in JUUL products other than nicotine, such as Vitamin E Acetate, Tetrahydrocannabinol, and MCT Oil. But none of these factors differentiates plaintiff’s claim from countless others in the MDL in which plaintiffs began using JUUL products as adults or allege injuries caused by non-nicotine ingredients. In fact, the operative Master Personal Injury Complaint includes allegations regarding various cardiovascular and lung injuries associated with JUUL use and the “chemical alphabet soup . . . comprising the JUUL liquid.” *See, e.g., In re JUUL Labs, Inc., Mktg., Sales Practices, and Prods. Liab. Litig.*, C.A. No. 3:19-md-2913, ECF No. 677, at 211 (N.D. Cal. June 18, 2020) (Amended Redacted Consolidated Master Personal Injury Complaint) (flavoring compounds used in e-cigarettes include “numerous chemicals known to be toxins if inhaled”).² Plaintiff’s action thus shares common questions of fact with the MDL litigation.

¹ Juul Labs, Inc. (JLI) and Altria Group, Inc.

² *See also id.* at 212 (e-cigarette use has been linked to “a variety of acute inhalational lung injuries such as lipoid pneumonia [and] bronchiolitis obliterans (popcorn lung)”); *id.* at 63 (listing “harmful (continued)

Plaintiff also argues that his action should not be transferred because he will be inconvenienced and because he challenges federal jurisdiction and seeks remand to state court. We are not persuaded by these arguments. Given the extensive overlap in factual and legal issues, transfer will avoid duplicative discovery and inconsistent rulings. Any inconvenience to plaintiff is not an obstacle to transfer where it “is necessary to further the expeditious resolution of the litigation taken as a whole.” *E.g., In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, MDL No. 2226, 2012 WL 7764151, at *1 (J.P.M.L. Apr. 16, 2012). And the Panel repeatedly has held that jurisdictional objections generally do not present an impediment to transfer. *See, e.g., In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001) (“[R]emand motions can be presented to and decided by the transferee judge.”).³

IT IS THEREFORE ORDERED that this action is transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable William H. Orrick III for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell
Chair

Matthew F. Kennelly
Roger T. Benitez
Nathaniel M. Gorton

David C. Norton
Dale A. Kimball
Madeline Cox Arleo

chemicals” in JUUL e-liquids); *id.* at 224, 228, 234 (JUUL use poses risk of “lung injuries, seizure, strokes, heart attacks, cardiovascular injuries, behavioral, cognitive and mental health injuries, among other harmful effects”).

³ Moreover, under Panel Rule 2.1(d), the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

**IN RE: JUUL LABS, INC., MARKETING, SALES PRACTICES,
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MDL No. 2913

SCHEDULE A

District of New Jersey

PERCELLA v. JUUL LABS, INC., ET AL., C.A. No. 2:21-16543